

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHAMUS REILLY,
Plaintiff,

v.

UPPER DARBY TOWNSHIP,
Defendant.

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: CIVIL ACTION
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: NO. 2:09-cv-02465-WY
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Order

AND NOW on this 6th day of January, 2010, upon consideration of the motion to dismiss (Docket No. 6) of defendant, Upper Darby Township, and plaintiff's opposition thereto, **IT IS HEREBY ORDERED** that:

1. The motion is **DENIED** with respect to Count I without prejudice to the right of defendant to file a motion for summary judgment, if appropriate, after plaintiff has had the opportunity to conduct discovery on the tolling issue for a period of 60 days from the date of this order; and
2. The motion is **GRANTED** with respect to Count II, which is **DISMISSED WITHOUT PREJUDICE** to plaintiff's right to file a Second Amended Complaint reinstating that count following the completion of the administrative process if the claim has not been administratively resolved.

/s William H. Yohn Jr., Judge
William H. Yohn Jr., Judge